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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/763,975

01/22/2004

Brian J. Cox

388700-058B

7891

37374

7590

06/10/2008

INSKEEP INTELLECTUAL PROPERTY GROUP, INC
2281 W. 190TH STREET
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TORRANCE, CA 90504

EXAMINER

SEVERSON, RYAN J

ART UNIT

PAPER NUMBER

3731

MAIL DATE

DELIVERY MODE

06/10/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/763,975	Applicant(s) COX, BRIAN J.	
	Examiner Ryan Severson	Art Unit 3731	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 May 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☒ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 23-28, 40 and 41.
 Claim(s) withdrawn from consideration: 29-39, 42 and 43.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Todd E Manahan/
 Supervisory Patent Examiner, Art Unit 3731

Continuation of 3. NOTE: The addition of new claims 44 and 45 require further consideration. Further, the new claims are presented without cancelling a corresponding number of finally rejected claims.

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that the combination proposed in the final action is improper for multiple reasons. Applicant first asserts that one of ordinary skill in the art would not look to Silvestrini for an expanding material as a replacement material for the reactive material of Deem. However, the combination is made to show that both materials are suitable for performing the intended purpose (blocking flow of blood into the aneurysm) and therefore one of ordinary skill in the art would have recognized that more than one type of material may be used to perform the same function. Applicant further discloses using the material of Silvestrini in the cover of Deem would defeat the purpose of Deem because the cover would then "likely" swell and occlude the vessel as well as the opening to the aneurysm. However, applicant provides no factual support for this assertion. Certainly the swellable material of Silvestrini does not occlude the healthy vessel, and so an argument asserting using the same material in the same way on a differently structured support structure would occlude a healthy vessel is by nature not persuasive. Finally, applicant argues Silvestrini and Deem teach away from one another because Deem is directed to restricting flow into an aneurysm and Silvestrini is directed to increasing flow in the blood vessel. Both Silvestrini and Deem maintain sufficient blood flow through the healthy blood vessel, and therefore the argument that they teach away from each other based on two different aspects of the inventions is not persuasive. The argument could only be persuasive if one of the two references taught occluding the healthy vessel. However, since neither have this desirability, the argument is not persuasive. The rejection as set forth in the final rejection is maintained.